

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

JOHN C. DUVALL,)
)
Plaintiff,)
)
vs.) Case No. CIV-14-0029-F
)
JEFFREY COY TROUTT et al.,)
)
Defendants.)

ORDER

The following matters are before the court in this § 1983 action brought by plaintiff, a Missouri prisoner appearing pro se.

- 1). The Supplemental Report and Recommendation of Magistrate Judge Shon T. Erwin of September 3, 2014, doc. no. 70, which did not end the referral, and plaintiff's objections thereto at doc. no. 73.
- 2). Magistrate Judge Erwin's Report and Recommendation of September 15, 2014, doc. no. 74, and plaintiff's objections thereto at doc. no. 79 with notice of separate exhibits filed by the plaintiff at doc. no. 80.
- 3). A motion by plaintiff filed on September 15, 2014, doc. no. 75, seeking an extension of time within which to serve defendant Frech (this motion was filed after the referral to the magistrate judge was terminated).
- 4). A motion by plaintiff filed on September 17, 2014, doc. no. 76 (also filed after the referral was terminated).

As plaintiff proceeds *pro se*, his filings are liberally construed. As required by 28 U.S.C. § 636(b)(1), the court has reviewed all objected to matters *de novo*. Having concluded that review, and after careful consideration of plaintiff's objections, the

entire record, as well as relevant authorities, the court finds that it agrees with the two Reports of the Magistrate Judge which are before the court at this time, and further finds that no purpose would be served by stating any further analysis here. Accordingly, plaintiff's objections to both Reports, doc. nos. 73, 79 and 80, are **DENIED**, and the following orders are entered.

1). The Supplemental Report at doc. no. 70 is **ACCEPTED, ADOPTED** and **AFFIRMED**. In accordance with the Supplemental Report, plaintiff's motion for summary judgment at doc. no. 29 is **DENIED**.

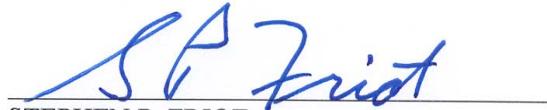
2). The Report and Recommendation at doc. no. 74 is **ACCEPTED, ADOPTED** and **AFFIRMED**. In accordance with that Report, defendant Troutt's motion for summary judgment at doc. no. 43 is **GRANTED**. Additionally, plaintiff's federal claims against defendant Troutt, as contained in counts one, four, and five, are **DISMISSED** with prejudice for failure to exhaust administrative remedies and because plaintiff has procedurally defaulted his administrative remedies. In light of that ruling, all federal claims against defendant Frech, as contained in counts six, seven and eight, are summarily **DISMISSED** with prejudice. The court declines to exercise supplemental jurisdiction over plaintiff's pendent state law claims which are contained in counts two and three, and these claims are **DISMISSED** without prejudice. And defendant Troutt's previous dispositive motion, doc. no. 31, which was filed before plaintiff's most recent amendment of his complaint, is **DENIED AS MOOT**.

3. Plaintiff's motion for an extension of time within which to serve defendant Frech is **DENIED AS MOOT**. Doc. no. 75.

4. Plaintiff's motion at doc. no. 76 asks the court for an order directing that plaintiff be ordered to pay the United States District Court Clerk \$14.00 so that plaintiff may obtain copies of his Third Amended Complaint in order to provide the

U.S. Marshall's Office with a service copy, and to cover the costs of an additional copy for himself to use in this litigation. The motion contends such an order is necessary because prison officials require same before they will remit funds. There is no longer any need for a service copy of the Third Amended Complaint as all claims have been disposed of and the request for additional time to serve defendant Frech has been denied. The clerk is hereby **DIRECTED** to send plaintiff a copy of his Third Amended Complaint, along with plaintiff's copy of this order. In light of these rulings there is no need for an order requiring payment of \$14.00 from plaintiff's account. Accordingly, the motion is **DENIED AS MOOT**.

Dated this 5th day of November, 2014.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

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